IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.1370 OF 2001

Shalantai Pandurang Bavachkar
and ors. .. Petitioners

Vs.

Ramchandra Ganpati Chawan .. Respondent

Mr. P.D. Dalvi for Petitioners.
Ms. Leena Patil h/f Mr. P.M. Pradhan for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2005.

P.C.:

1. Being aggrieved by rejection of the application at Exh.13 filed in Regular Darkhast No.204 of 1996 by an order dated 4-7-2001 passed by the learned Joint Civil Judge, Junior Division at Sangli, this Civil Revision Application has been filed by the LRs of the original defendant.

2. Regular Civil Suit No.380 of 1979 was filed by the present respondent-plaintiff for specific performance of the agreement for sale entered into on

6-5-1976. The original defendant owned agricultural land in Gat No.135 and he agreed to sell the same for an amount of Rs.9,000/- by the said agreement and on receiving an amount of Rs.7,000/- the possession of the same was handed over to the plaintiff and it was further agreed that the sale deed would be executed in his favour on payment of the balance amount of Rs.2,000/-. Both of them agreed to bear the expenses of the execution of sale deed by equal shares. The trial court had issued summons at Exh.11 and inspite of its receipt, the defendant did not appear. The trial court, therefore, passed an order on 25-2-1983 i.e. after a period of about 4 years to proceed exparte. The plaintiff was called upon to prove his case by filing affidavit vide order dated 18-7-1983 and accordingly such an affidavit was filed at Exh.18 by the plaintiff along with another affidavit of Shri Rajaram Ramu Salunkhe. The plaintiff also produced the 7 x 12 extract of the suit land at Exh.5, notice at Exh.3/2, a receipt of acknowledgment at Exh.3/3, the original agreement to sell the land dated 6-5-1976 at Exh.3/4 and the Kabjepatti (Receipt of Possession) at Exh.3/5. The trial court considered all this

evidence and as is evident from the certified copy of the Roznama dated 5-8-83, the case was adjourned for exparte judgment. After more than one year the case was transferred to the court of the learned Joint Civil Judge, Sr. Division by the District Court vide its order dated 17-9-84 and again thereafter about one year to the court of 3rd Joint Judge, Jr. Division vide order dated 8-7-85. On every adjourned date the concerned learned Judge recorded his reasons for not pronouncing the judgment and finally the judgment was pronounced on 27-11-1985 by the learned 3rd Joint Civil Judge, Junior Division at Sangli. The operative part of the decree passed in favour of the plaintiff on 27-11-1985 reads as under:-

> " It is hereby ordered and decreed that the deft. shall execute the sale deed of the suit land bearing Gat No.135 more particularly described in plaint para No.1 in favour of the plaintiff within a period of two months from the date of this order.
>
> . The parties in this suit shall bear the expenses of the execution of the sale deed in equal shares. The plaintiff shall pay the balance of amount of the purchase price of Rs.2000/- to the defendant at the time of executing the sale deed. In case, the defendant fails to execute the sale deed as

ordered above, the plaintiff is at liberty to get it executed with the help of the court by executing this decree."

3. Plaintiff waited for almost 10 years and as there was no response from the defendant or his LRs to execute the sale deed, Regular Darkhast No.204 of 1996 was filed by him and in the said Darkhast an application at Exh.13 came to be filed by the LRs of the Judgment Debtor pointing out that the decree under execution was passed on 27-11-1985 and as on that date original defendant was not alive. He died on 22-12-1983 and, therefore, as per the petitioners the decree under execution passed in Regular Civil Suit No.380 of 1979 was null and void. The learned Judge of the Execution Court recorded the respective contentions and also noted that the defendant died on 22-12-1983 whereas the judgment was delivered in Regular Civil Suit No.380 of 1979 on 27-11-1985 when the defendant was not alive. It was submitted by the petitioners that the provisions of Order XX Rule 6 were not considered by the trial court while delivering the judgment and, therefore, the decree is

not executable against the LRs of the Judgment Debtor. They also contended that the application for execution filed by the decree holder at Exh.21 was decided behind their back and, therefore, it was necessary to recall the order impugned and hear the application on merits. The application at Exh.21 was obviously filed by the decree holder to bring the LRs of the original defendant on record and the same was allowed prior to the impugned order.

4. The trial court referred to the provisions of Order XXII Rule 6 of C.P.C. and held that the decree under execution could not be held null and void. The said provisions reads as under :-

> "**No abatement by reason of death after hearing**.- Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."

5. The trial court also relied upon the decision of the Supreme Court in the case of N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao and ors. reported in **(1995) 5 SCC 115** in support of its findings that the decree pronounced notwithstanding the death of the defendant was not a nullity.

6. As was argued before the Executing Court, the learned counsel for the petitioners relied upon the provisions of Order XX Rule 6 of C.P.C. and submitted that when the pronouncement of judgment was postponed from time to time, before it was finally pronounced on 27-11-1985, it was mandatory for the court to issue a notice to the defendant or his LRs. When the original defendant had not caused his appearance either in person or through an Advocate and from the record it is seen that the no steps were taken even to appear after the trial court concluded the hearing and reserved its judgment to be pronounced later. On every date reasons have been mentioned for adjournments and the next date for pronouncement was given as is evident from the certified copy of the

Roznama. The arguments were concluded as noted earlier, on 5-8-1983 and the case was adjourned for exparte judgment to 13-8-1983 and admittedly the original defendant died thereafter i.e. on 22-12-1983. Thus, the view taken by the court below in the impugned order cannot be termed as grossly erroneous so as to call for interference in this revision application. The decree having been passed in the year 1985 and it has still remained unexecutable after 20 years for some reason or the other. This court while issuing notice by order dated 21-1-2001 had granted ad-interim relief staying execution proceedings. The CRA was dismissed in default for want of prosecution on 7-8-2002. It was restored by an order dated 28-8-2002 by allowing Civil Application No.27 of 2002 and even thereafter it was listed for admission for the first time on 25-3-2004.

7. Challenge to the impugned order is devoid of merits and hence the Civil Revision Application is rejected. Ad-interim order granted earlier stands vacated.

(B.H. Marlapalle,J.)